

REMARKS

Claims 128-187 are pending. Claims 1-127 were canceled in the amendment filed on August 2, 2004. Of the pending claims, claims 128-147 were withdrawn from consideration by the Examiner, as being drawn to a non-elected invention.

With respect to the invention election requirement in the Office action, the provisional election of invention II (claims 148-187) made by the applicant's representative Gregory Muir in the telephone conversation on July 29, 2004 is hereby confirmed.

Regarding the examined claims, the examiner rejected claims 148, 153-159, 164-166, 168-173, and 187 under 35 U.S.C. §102(e) as being anticipated by Patel et al (US pub. 2004/0008402). The examiner further rejected claims 149-152, 160-163, and 174-186 under U.S.C. §103(a) as being unpatentable over Patel et al. (2004/0008402).

Applicants hereby respectfully submit that these rejections are in error, because the Patel reference is not available as a reference under 35 U.S.C. § 102(e) or 103.

The Patel reference is not available as a prior art under 35 U.S.C. §102(e) because the Patel reference and the present invention have the same inventive entity. That is, the Patel reference, which is an application for patent, published under section 122(b) is not "by another" filed in the United States.

Also, the claimed invention in the present application and the subject matter at issue in the Patel reference were "at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person." Therefore, in accordance with the exception for 35 U.S.C. §102 (e) in 35 U.S.C. §103 (c), the Patel reference is further not available under 35 U.S.C. §103/102(e) for rejecting the claims of the present invention. Copies of the assignments for the current application and the Patel reference are enclosed herewith.

Moreover, applicants have amended the present application as being a continuation-in-part of US patent application publication No. 2004/0008402 to Patel et al, filed July 3, 2003.

In view of the amendments and remarks herein, it is respectfully submitted that claims 148-187 are in condition for allowance. Favorable consideration and prompt allowance are respectfully requested. If any fees are due in connection with this

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submission, please debit our Deposit Account # 501516.

Respectfully submitted,



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